HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 122 of 2003

Satish Chandra Grover and others.

VS

District Judge U.S. Nagar and others.

Approved for reporting.

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~~Not approved~~ for reporting

Date of decision 12.10.2004

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 122 OF 2003

Satish Chandra Grover and others. …….Petitioner.

Versus

District Judge, Udham Singh Nagar and others. …Respondents.

12.10.2004

HON'BLE RAJESH TANDON, J.

Heard Sri Rakesh Thapliyal counsel for the appellant and Sudhir Kumar, counsel for the respondent.

By the present Writ Petition the petitioners have prayed for quashing of the order dated 5th February, 2003 passed by the District Judge, Udham Singh Nagar in Rent Control Appeal No. 13 of 2001 as well as the judgment and order dated 26.11.2001 passed by the Prescribed Authority in P.A. Case No. 3 of 1998.

Both the courts below have recorded a finding of fact that the premises is required by the respondent no. 3 for establishing the Clinic.

Discussion on bonafide need:- Briefly stated, the respondents no. 2 and 3 have filed an application under Section 21 (1) (a) of U.P. Act No. 13 of 1972 praying for eviction of the petitioners from the premises situate in Bhagat Singh Chauk, Rudrapur district Udham Singh Nagar. The respondents no. 2 and 3 have submitted that the petitioners are the tenants in the

shop in dispute on a rent of Rs. 350/- per month and they have not paid any rent since 1st December, 1997 to the owners. It was submitted by the respondents that Dr. Asha Agarwal is a qualified medical practitioner and has passed her Post Graduate (M D Course) in gynaecology and obstetrics in 1997. The Clinic was started by the respondent no. 3 on the ground floor of the building and has only three rooms and due to the paucity of the accommodation she is unable to run her Nursing Home and she is facing a grave hardship in maintaining the required medical facilities to the patients and as such shop in dispute is bonafide required for the use and occupation of the respondent no. 3.

The respondents no.2 and 3 have submitted that in fact the petitioners have got his own shop in district Firozpur by the name of Cool Care Centre and they are running their cloth business in one of the shop on the ground floor of the house in Allahabad Bank Lane. The respondents have submitted that the premises is bonafide required for the use and occupation of the respondent no. 3.

Written Statement was filed by the petitioners, where it has been stated that the respondent no. 3 has a Clinic covering an area of 45X90 feet.

So far as the medical education of the respondent no. 3 is concerned, it has not been denied that she is a qualified medical practitioner. The respondent no. 3 has filed her own affidavit, where she has stated that in order to give more facilities to the patients, she requires a full-fledged Nursing Home and she has got specialization in the Female and as such she requires the

premises in order to develop her Clinic and the comparative hardship also lies in her favour.

A perusal of the record shows that the respondent no. 3 has filed her own affidavit, where she has stated that she is a qualified medical practitioner, she has passed out her MBBS degree in the year, 1992 and Post Graduate (MS) Course in Gynaecology and obstetrics in the year, 1997.

Registration Certificate from the Medical Council of India was also filed. She has started her Clinic-cum-Nursing Home on the ground floor of the building. She is running the Clinic in three rooms. One of the rooms is being used as operation theatre, other room is used as labour room, while the third room is used as a private room. The hall in the house has been temporarily partitioned and is being used as general ward and consultation room. She has further stated that she is facing great hardship due to the fact that size of the consultation room is only 15X10 Feet.

It has also come in the evidence on record that the petitioners have closed down their original business, which their predecessors were carrying on and now the business is lying stand still and they do not require the premises any more.

Both the courts below have recorded findings of fact with regard to the bonafide need and comparative hardship in favour of the landlord.

Application has been filed by the landlord for release of the accommodation showing her bonafide need. In paragraph nos. 4, 5, 6, 7 and 8, the requirement of the landlord has been mentioned, which are quoted below:-

"4. That the applicant no. 2 is a qualified Medical Practitioner and has passed out her post graduate (M.B.) course in Gynaecology & Obstatrics in 1997.

5. That the applicant no. 2 has started her clinic cum nursing home on the ground floor of the building in which the shop in dispute is situated.

6. That the applicant no. 2 at present has only 3 reasons at her disposal. One of the room is being used as Operation Theater, other is being used as Labour Room while the third one is being used as a private room. The Hall has been temporarily partitioned as one General Ward containing three beds and one consultation room have been created.

7. That due to paucity of space, the applicant no. 2 is running her Nursing Home in a very congested place. The applicant no. 2 is facing great hardship in maintaining required medical hygiene etc.

8. That the shop in dispute is bonafide required and urgently needed by the applicant no. 2 for her professional requirements."

Aforesaid facts have not been controverted in the written statement except by their denial.

So far as the clinic is concerned, it is admitted to the petitioner that she is running a clinic on the ground floor, and on the first floor there is a residential house. Paragraph 18 of the objection to that effect is quoted below:-

"यह कि प्रार्थीनी के पास ४५ फुट ६० फुट का एक भवन मैने बाजार रूद्रपुर में स्थित है जिसके भूतल में प्रार्थिनी की पुत्री श्रीमती आशा अग्रवाल का क्लीनिक है तथा प्रथम तल में प्रार्थीनी का आवास है जिसमें प्रार्थीनी की पुत्री आसानी से अपना क्लीनिक चला सकती है ।"

Dr. Astha Agarwal has also filed her own affidavit and has stated in paragraph 5, 7, 8, 9 and 16 regarding the requirement of the clinic.

So far as the requirement of a Doctor is concerned, it has been held in the case of ***Chandra Prakash Dua Vs. Kartar Singh and others,*** reported in Allahabad Rent Cases, 1978, Page 270 as under:-

"So far as the shops are concerned, the same are required by the landlord for the purpose of his son Dr. Mahendra Singh. It has been found by the District Judge that Dr. Mahendra Singh had to establish himself in private medical practice and that for want of space he had not been able to do so despite the fact that he had done his M.B.B.S. long time back. It has further bee n found that the landlord had no other place available to him where he could start a clinic and a Nursing Home for his son. The aforesaid finding is finding of fact."

13. *The distinction between law and fact has been lucilly pointed out by Block in his law dictionary 1951 ediction on page 706 which is as under:-*

"Law is a principle, fact is an event. Law is conceived; fact is actual law is a rule of duty: fact is that which has been according to of in contravention of the rule……"

It is the settled law that this Court sitting in writ jurisdiction has no jurisdiction to correct an error of fact. The finding recorded on a question of fact is binding unless it can be shown that it is vitiated by an error of law apparent on the face of the record. It is equally established that the High Court cannot re-appraise the evidence or see if the interference drawn from a piece of evidence is wrong. This is to be done by a court of appeal.

14. Dealing with the question of jurisdiction under Article 226 of the Constitution, the Supreme Court in Nagendra Nath Bora and another v. Commissioner of Hills Division.

"In the judgment and orders impugned in these appeals, the High Court has exercised its supervisory jurisdiction in respect of errors which cannot be said to be errors of law apparent on the face of the record. If at al, they are errors, they are errors in appreciation of documentary evidence or affidavits, errors in drawing interference of omission to draw interference. In other words, those are errors which a court sitting as a court of appeal only, could have examined and, if necessary, corrected."

This decision was followed by the Supreme Court in Babhutmal v. Laxmibai."

In Mst. Bega Begum V/s Abdul Ahmad Khan 1979 A.I.R. SC page 272, it has been held:-

"The connotation of the term of the term 'requirement should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get an order of release. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds contemplated under section 21 of the Act. The provisions contained in the Act strike a just balance between the genuine need of the landlord on the one hand and the great inconvenience and troubles of the tenants on the other. Since section 21 of the Act is means for the benefit of the landlord, therefore, it must to be so construed as to advance the object behind the said provision. The tenant has to establish that if he is evicted he will suffer greater hardship as compared to the landlord and must lead clear evidence to show that inspite of the best efforts he was unable to get another alternative suitable accommodation in the

absence whereof the scale of relative hardship may be titled in favour of the landlord as the inconvenience, loss or trouble resulting from a denial of the order of release in favour of the landlord will for outweight the prejudice or the inconvenience which may likely be caused to the tenants."

The Apex Court in the case of G.C. Kapoor Vs. Nand Kumar Bhasin and others reported in 2001 Supreme Court and Full Bench Rent Cases 541 has rightly pointed out the plight of a young man to settle in the business. The observations of the Apex court in para 13 and 14 of the judgment are quoted below:-

"13. Another reasoning of the Courts below is that as Rohit did not start the business between the year, 1992 and 1997 by taking any property on rent, it could not be said that the appellant needed the suit premises to run the business. There is a categorical averment by the appellant would not be able to take any other premises on rent. Not starting the business in a rented premises during the above-mentioned period, cannot be a ground to deny decree for eviction of the suit premises. This Court in Gaya Prasad Vs. Pradeep Srivastava, 2001 (2) SCC 604: 2001 SCFBRC 128, relying on early decisions of this court held that the crucial date for deciding as the bona fide of requirement of the premises in question for starting clinic by the son of the landlord. The litigation continued for 23 years and during that period the son of the landlord joined provincial medical service and was posted at different places. The Court refused to take notice of the subsequent event holding that crucial date was the date of filing of the eviction petition.

14. That Courts below completely overlooked clause (d) of sub-rule (2) of Rule 16 of the rules while deciding the eviction

petition. From the rule extracted earlier, the Court has to ascertain whether the son of the landlord has completed technical education and is not employed in the Government and wants to engage in self-employment. All the criteria laid down in the said clause have been proved and therefore, appellant is entitled to get the decree for eviction."

In G.C. Kapoor's (supra) case as well as in the judgment of Sushila Devi, the Apex Court has recorded a finding that in order to give the incentive to the persons, who have obtained additional qualification as required under Rule 16 (2) (d)of U.P. Act No. 13 of 1972, the landlord can not be compelled to do his business in an atmosphere, which does not suit to her.

Rule 16(2) (d) reads as under:-

"Where as son or unmarried or widowed or divorced or judicially separated daughter or male daughter of a male lineal descendant of the landlord has, after the building was originally let out, completed his or her technical education and is not employed in Government service, and wants to engage in self-employment, his or her need shall be given due consideration."

In Tej Kumar Vs. Additional District and Sessions Judge, Hardwar and others – 1994 ARC 117, following the aforesaid two decisions, it has been held as under:

"The inaction of the tenant to search for an alternative accommodation, as already indicated hereinbefore, constitutes an additional factor which may outweight the hardship, if any, likely to be suffered by the tenant in the event of the grant of the release application in case where the bona fide requirement for the release stands conclusively established."

In the case of Prem Prakash Gupta and others Vs. Second Additional District Judge, Allahabad and others – Allahabad Rent Cases 1993 (1) page 77, it has been held that no doubt true that the tenant will have to be ousted from a house, if a decree of eviction has been passed, yet such an event by itself will not be a valid ground for refusing a decree for eviction. The observation in the case of Prem Prakash Gupta (supra) is quoted as below:

"As observed by this Court in its decision in the case of Rajeshwari Prasad Vs. Fateh Bahadur Chaturvedi and othrs reported in 1984 (1) A.R.C. 387, the bona fide need is the foundation of application for eviction of a tenant without which it cannot be allowed. Hardship is relative word"……..

Discussion on Comparative hardship

In paragraph 9 of the Application, the Landlord has stated as under:-

"That the opposite parties are wealthy men and have ample resources. The opposite parties own a house in Town Rudrapur in Allahabad Bank Lane, which has two big shops at ground floor."

No further explanation has been given in the Written Statement regarding averments made above.

While deciding the comparative hardships, the Appellate Court has recorded a finding, which is quoted below:-

"उपरोक्त सम्पत्ति के अतिरिक्त प्रार्थीगण के अनुसार विपक्षीगण के पास कस्बा रूद्रपुर में इलाहाबाद बैंक लेन जो उनके स्वामित्व वाला भवन है, में दो दुकाने हैं। विपक्षीगण ने इस भवन में केवल एक ही दुकान होना बताया है। इस भवन के संबन्ध में विपक्षीगण ने नगरपालिका का कोई कर सम्बन्धी अभिलेख दाखिल नहीं किया। उसके प्रस्तुत किये जाने से यह तथ्य सिध्द हो सकता था कि वास्तव में उनकी इलाहाबाद बैंक लेन स्थित भवन में भूतल पर कितनी दुकाने हैं। विपक्षीगण द्वारा भवन का कर सम्बन्धी अभिलेख प्रस्तुत न किये जाने से केवल एक ही निश्कर्श निकलता है कि विपक्षीगण इलाहाबाद बैंक लेन में स्थित अपने भवन में दुकानों की संख्या को छिपाने का प्रयत्न

कर रहे है। इस तथ्य को मद्देनजर रखते हुए मेरी राय में निष्चय ही प्रार्थीगण का यह कथन स्वीकार किये जाने योग्य है कि विपक्षीगण के पास उनके स्वामित्व वाले भवन में, जो कस्बा रूद्रपुर में इलाहाबाद बैंक लेन में मौजूद है, के भूतल पर दो दुकानें हैं। जिनमें एक दुकान में विपक्षी नं0 3 अध्यासित है तथा दूसरी दुकान पर वह ट्रान्सपोर्ट का कार्य कर रहे हैं।"

So far as the hardship as contained under proviso to Section 21 (1) (a) is concerned, the evidence on the record does not establish that the petitioners have made any effort in searching out the accommodation and therefore, following the judgment in ***Ms. Bega Begam V. Abdul Ahmad Khan 1979 A.I.R. SC 272,*** the Apex Court in the case of ***Bhagwan Das Vs. Smt. Jiley Kaur and other*** S.C.F.B.R.C. 1991 on page no 182 has under as under:-

"Thirdly, it was a case where was even this additional circumstances that the appellant had brought no material on record to indicate that at any time during the pendency of this long drawn out litigation he made any attempt to seek an alternative accommodation and was unable to get it. In Mst. Bega Begum V/s Abdul Ahad Khan 1979 A.I.R. SC page 272; 1986 SCFBRC 346 (SC) it was held that in deciding the extent of the hardship that may be caused to one party or the other in case a decree for eviction is passed or is refused each party has to prove its relative advantages or disadvantages and the entire onus cannot be thrown on the plaintiffs to prove that lesser disadvantages will be suffered by the defendants and that they are remediable."

In Joginder Pal Vs. Naval Kishore Behal 2002 Supreme Court and Full Bench, Rent Cases page 388, the apex court after relying upon the judgment of Mst. Bega Begum and others Vs. Abdul Ahmad Khan 1979 A.I.R. SC 272 and Shiv Sarup Vs. Dr. Mahesh Chand Gupta, 1999 SCFBRC 330 in para 8, 9, 10, 16 and 17 held as under:

"8. The need for reasonable interpretation of Rent Control Legislation was emphasized by the Court in Mst. Bega Begum and Others Vs. Abdul "Ahmad Khan (dead by Lrs. And others, 1979 A.I.R. SC 272: 1986 SCFBRC 346. Speaking in the context of reasonable requirement of landlord as a ground for eviction the Court guarded againt any artificial extension entailing stretching or straining of language so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. The Court warned that such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified gourds. ***In Kewal Singh Vs. Lajwanti, (1980) 1 SCC 290,*** this Court has observed while the rent control legislation has given a number of facilities to the tenants it should not be construed so as to destroy the limited relief which it seeks to give to the landlord also. For instance one eviction which is contained in almost the Rent Control Act in the contrary is the question of landlord's bona fide personal necessity. The concept of bona fide necessity should be meaningfully construed to make the relief granted to the landlord real and practical approach instructed by realities of life. An approach either too conservative or pedantic must be guarded against.

9. The Rent Control Legislation are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The legislative intent has to be respected by Courts, while interpreting the laws. But it is being uncharitable to Legislature if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants go to the extent of being unfair to the landlords. The Legislature is fair to the tenants as to the landlords both. The Courts have to adopt a reasonable and balanced approach while interpreting Rent Control Legislature starting with an assumption that equal treatment has been meted out to both the

sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the Court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislation to take care of those situations where the landlord too are weak feeble and feel humble."

Relying upon the judgment of Apex Court ***Bega Begam Vs. Abdul Ahmad Khan*** reported in 1979 AIR SCC 273, it has been observed in ***Prem Prakash Gupta and others Vs. Second Additional District Judge, Allahabad and others***- Allahabad Rent Cases 1993 (1) page 77, that no doubt true that the tenant will have to be ousted from a house, if a decree of eviction has been passed, yet such an event by itself will not be a valid ground for refusing a decree for eviction. The observation in the case of ***Prem Prakash Gupta (supra)*** is quoted below:-

"As observed by this Court this Court in its decision in the case of Rajeshwari Prasad Vs. Fateh Bahadur Chaturvedi and Others reported in 1984 (1) A.R.C 387, the bonafide need is the foundation of application for eviction of a tenant without which it cannot be allowed. Hardship is relative word"……

In the case of Bega Begum Vs. Abdul Ahmad Khan, reported in 1979 AIR SC 272: 1986 SCFBRC 346, the Apex Court had observed that while it was no doubt true that the tenant will have to be ousted from a house if decree of eviction had been passed yet such an event by itself could not be a valid ground for refusing a decree for eviction. While considering the question of relative hardship the requirement of the landlord having regard to his profession or calling or even the status have to be taken into account. In the present case while the landlord had led sufficient evidence to show that no other alternative accommodation was available, the tenant had not let any such evidence which could show that he had ever attempted to search for

an alternative accommodation or ever attempted to seek allotment of any accommodation which could be utilized for shifting his business which was dwindling day by day and as observed by the Appellate Authority itself, had been closing during the pendency of appeal.

In this case, where there is inaction on the part of the tenant in searching for an alternative accommodation by seeking allotment or otherwise in spite of coming to know that the building in his tenancy is genuinely required by the landlord for satisfying his bona fide need, the question of relative hardship envisaged under the 4th proviso to section 21 of the Act deserves to be considered liberally in favour of the landlord specially when the bona fide need for the grant of release sought for its established. While it is true that a proviso embraces the field which is covered by the main provision and the main part cannot be construed in such a manner so as to render a proviso redundant yet under the scheme of the Act, the 4th proviso to section 21 does not appear to fall within those exceptional cases where this proviso may be said to be a part of the substantive provision which, as is apparent from the demised premises to the landlord on his successfully establishing the bona fide requirement of the same for the purpose envisaged in that section.

Rule 16 (2) (a) of the Act No. XIII of 1972 has been interpreted in the case of Munni Lal Gupta Vs. 7th Additional District and Sessions Judge, Aligarh reported in 1997 (1) A.R.C. 301. After relying upon the judgment of Rejendra Kumar Gupta Vs.Gopal Krishan and other, A.I.R. 1995 Allahabad 82, it has been held that suitable alternative accommodation, which may become available on an effort being made in that direction is also a factor to be considered and want or earnest efforts in looking for suitable alternative accommodation, disentitles protection given to the tenant while considering the comparative hardship of the parties. The observations in the decision of Munni Lal Gupta (supra) are quoted below:-

"A Suitable alternative accommodation which may become available on an effort being made in that direction is also in the comprehension of the expression and in the facts and circumstances of the case, it has been held that the petitioner was wanting in earnest efforts in looking for suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretched. In Rajendra Kumar Gupta Vs. Gopal Kishan and Others, AIR 1995 Alld. 82: 1994 ARC 11, it has been held by Sudhir Narain, J. and I concur with the view taken therein that "one of the principles for considering comparative hardship of the parties is to find out as to whether the tenant had made a sincere efforts to find out alternative accommodation and had placed materials before the authorities to come to their conclusions that he made such an effort". The fact that earlier application for release, met the fact of rejection some 10 years ago, could not be projected backward to operate as an obstacle in the way of the release application being allowed as with the passage of time, the situation has undergone considerable change. Indubitable, landlord Sanjai Gupta did his M.A. after rejection of the earlier applications and his failure to secure employment for himself, lends congency to his moving the present application."

Interference under Article 226/227 of the Constitution of India:-

The jurisdiction under Article 226/227 of the Constitution of India is limited and High Court cannot act like a Court of appeal so as to interfere with the findings of the Prescribed Authority on the question of bona fide hardship.

Relying upon the earlier judgment in the case of ***Surya Dev Rai Vs. Ram Chander, SCC 2003 Vol. 6 page 675,*** the Apex Court has held in the case of ***Ranjit SinghVs. Ravi Prakash (2004) 3 Supreme Court Cases 682*** as below:-

"In Surya Dev Rai Vs. Ram Chander Rai this Court has ruled that to be amenable to correction in certiorari jurisdiction, the error committed by the Court or authority on whose judgement the High Court was exercising jurisdiction, should be an error which is self-evident. An error, which needs to be established by lengthy and complicated arguments or by indulging in a long-drawn process of reasoning, cannot possibly be an error applicable for correction by writ of certiorari. If it is reasonably possible to form two opinions on the same material, the findings arrived at one way or the other, cannot be called a patent error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution also, it has been held in Surya Dev Rai that the jurisdiction was not available to be exercised for indulging in re-appreciation or evaluation of evidence or correcting the errors in drawing interference like a Court of appeal. The High Court has itself recorded in its judgment that- "considering the evidence on the record carefully" it was inclined not to sustain the judgment of the appellate Court. On its own showing, the High Court has acted like an appeal Court which was not permissible for it to do under Article 226 or 227 of the Constitution."

Conclusion

Since both the courts below have recorded the findings of fact regarding bonafide need and comparative hardship of the landlord, I find no infirmity in the order passed by the Courts below:-

However, in order to mitigate the hardship, the petitioners are provided two years rent, which the landlord shall deposit before the Prescribed Authority.

However, if the rent is due from the petitioner as stated in the application itself, the same shall be adjusted and the petitioner shall deposit the amount of rent, which are due towards the landlord.

The petitioner is allowed time by 15th January,2004 to vacate the premises provided he gives the undertaking before the Prescribed Authority by 30th November, 2004.

However, the amount of two years rent shall be adjusted in the rent, which are due to the petitioner.

In case of any default in the payment of rent or in the undertaking the eviction decree shall proceed forthwith.

Writ Petition is dismissed. No order as to costs.

(RAJESH TANDON, J.)

12.10.2004

P.S.Rathour